IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

**CRIMINAL APPEAL NO. 360 OF 2006**

Shri Triveni Mewalal Jaiswal
R/o Ganesh Nagar, Tekdi, Room No.1
Bhim Nagar, Kalwa, Thane ..Appellant.
V/s
The State of Maharashtra ..Respondent.

None for the appellant.

Mrs. M.M. Deshmukh, APP for the State.

**CORAM : J.H. BHATIA, J.**

**DATE : 20TH MARCH, 2007.**

**ORAL JUDGMENT**

. The appellant was convicted for the offence punishable under section 307 of Indian Penal Code and was sentenced to undergo R.I. for 5 years and to pay fine of Rs.5000/- and in default to pay fine to undergo further R.I. for one year by the Judgment and order dated 7/3/2006 passed by the 4th Ad-hoc Additional Sessions Judge, Thane in Sessions Case No.82/2005. The appellant, by this appeal, has challenged the conviction and sentence.

2. The prosecution case, in brief, is that first informant Lalji Sabil Yadav (P.W.1) is resident of Jai

Bhim Nagar, Kalwa Thane and works as Rickshaw driver. He resides there alone, while his family members are living in Uttar Pradesh. The present appellant, who is accused, was next door neighbour to P.W. 1 Lalji Yadav. The appellant was living with his family members in the adjoining house. According to the prosecution, the incident of this case took place on 10/6/2004 at about 8.30 a.m. P.W.1 Lalji Yadav was washing clothes in his house, at that time the daughter of the appellant knocked the door. On this P.W.1 Lalji began to abuse her by saying "Mather chod, as to why you are knocking the door". Accused heard it and came out from his house and asked P.W.1 Lalji Yadav, as to why he was abusing his daughter. Due to this, exchange of abuses took place between the two and the accused took out the sickle and assaulted P.W.1 Lalji Yadav and thus caused an injury beginning from the chest and going down towards the left side of abdomen. Immediately he was taken to Kalwa Police Station by P.W.2 Usha Jaiswal. On the basis of the report Exh. 19 lodged by Lalji Yadav, the offence came to be registered. He was referred to Chhatrapati Shivaji Hospital, Kalwa, for examination and medical treatment. During the investigation, clothes of the accused, as well as of the injured were seized. The

weapon of offence was seized from the spot of incident. These articles were referred to C.A. After investigation charge-sheet was filed against the accused for the offence under Section 307 of IPC.

3. The accused pleaded not guilty and according to him, during his absence from his house, the complainant Lalji Yadav entered in to his house with intent to outrage modesty of his wife. However, at the same time the accused came there and quarrel took place. According to him, Lalji himself was trying to assault him with sickle but during the scuffle he himself was injured with sickle in his own hand. On behalf of the prosecution in all 8 witnesses were examined. Some documents were also placed on record. Accused did not lead any defence evidence. The learned trial Court rejected the defence story and believing the prosecution evidence, convicted the accused for the offence punishable under section 307 IPC and sentenced as stated above.

4. At the outset, it may be stated that Mr. Rajkumar Yadav, Advocate on record for the appellant did not appear to argue the matter. On earlier date also, he had not appeared. Heard Mrs. Deshmukh, learned

A.P.P. I have gone through the complete prosecution evidence, as well as impugned judgment.

5. Out of the 8 witnesses examined by the prosecution, P.W.1 Lalji Yadav is the star witness. P.W. 2 Usha Devi, P.W.5 Durgesh and P.W. 6 Madanlal were examined as eye witnesses. However, P.W.2 Usha Devi and P.W. 6 Madanlal did not support the prosecution and were declared hostile. P.W. 5 Durgesh, who is admittedly a casteman of P.W.1 Lalji Yadav, tried to support him. P.W.1 Lalji Yadav deposed the prosecution story, which is also to be found in the FIR Exh.19, lodged by him immediately after the incident. In view of this oral evidence and contents of FIR, it becomes clear that he was washing the clothes in his house. At that time, daughter of the present accused, who was a small girl, knocked the door but accused began to abuse her by saying "Mather chod". Admittedly the house of the accused is adjoining the house of Lalji Yadav. The accused came out from his house and asked Lalji, as to why he was abusing. It appears that after this, exchange of hot words and abuses took place and in the heat of anger the accused took out a sickle and gave a single blow to Lalji Yadav causing inscised wound on

the chest and abdomen to the left side extending from xipisternum to left lumber region, size 12" X 2" X 1". The X-ray and Sonography was taken. As per the evidence of P.W.7 Dr. Raju Murudkar sonography revealed that the injury was penetrating in deep organ i.e. lung. However, it appears that he did not require any operation and according to the admission of Lalji Yadav himself, he was indoor patient for about 8 days and was discharged. From this, it appears that the depth of injury was about 2" but it did not cause any injury to the lung or other internal vital organ of the body. P.W. 5 Durgesh Yadav tried to support the prosecution evidence. However, according to him, he heard the sound of pelting of stones by the son of accused and therefore, he came out and saw the incident. In fact, it is no body’s case that son of the accused was pelting stones on the house of P.W.1 Lalji. P.W.6 Madanlal Mali, who was examined as eye witness did not support the prosecution. According to him, one woman approached him and informed that some quarrel took place. Therefore, he went to the spot of incident. At that time Lalji Yadav was lying on the ground with injury and he was put in rickshaw. In the cross-examination on behalf of accused, he has given description of the

locality. According to his admission, his house is situated in 3rd lane from the house of Lalji Yadav. Therefore it was really not possible for him to see the incident, which took place within a very short time. He also deposed that house of Lalji Yadav is at the one end of the lane, while house of P.W. 5 Durgesh is to the other end of the lane and in between there are 10 to 12 houses. In view of this, presence of Durgesh also appears to be doubtful. Further, P.W.5 Durgesh deposed about the pelting of stones by the son of accused, which is not even case of P.W.1 Lalji himself. In view of this, no reliance can be placed on the testimony of P.W.5 Durgesh Yadav.

6. The evidence of P.W.3 Hariprasad Mourya reveals that the spot panchanama Exh. 22 was prepared on 10/6/2004 and from the spot sickle Article 1 and a wooden rib Article No.2 came to be seized. Even though in the examination-in-chief he did not depose about the seizure of clothes of the accused, as well as P.W. 1 Lalji, in the cross-examination by APP he supported the prosecution story and admitted that under panchanama Exh.23 a Barmoda Pant of the accused was seized and there were blood stains on the same. Similarly a lungi

of the complainant, stained with blood, was also seized under panchanama Exh.24. These two clothes, being Articles 3 and 4, were identified by him. P.W.4 Mahesh Gupta was another panch about seizure of these clothes and he also supported the prosecution story. Evidence of P.W. 8 PSI Vasant Chavan reveals that all these articles were seized by him under the panchanama and he also referred all the muddemal articles to C.A. C.A. report Exh. 42 reveals that human blood of group "O" was found on the sickle, Barmoda of the accused and Lungi of the complainant. As per another C.A. report Exh.48, blood group of Lalji Yadav was "O". In view of this, it can be safely held that blood of P.W.1 Lalji was found on his lungi, barmoda pant of the accused, as well as on the sickle. In fact taking into consideration the defence of the accused it is almost admitted fact that Lalji had suffered the injury with that sickle during the same incident.

7. As per the defence story is concerned, I agree with the trial Court that there is no substance or material on record to support the plea of the accused that the complainant Lalji had entered into his house to outrage modesty of the wife and that he himself reached

there and then quarrel took place and that Lalji was injured with the sickle, which he himself was holding.

8. If the evidence of P.W.1 Lalji is taken at its face value without any additions or ommission, it becomes clear that there was no previous enemity, quarrel or dispute between the two. They were next door neighbours. Both were rickshaw drivers but it appears that there was no much acquaintance between the two. The accused was aged about 30 years when this incident occurred. Though there is nothing on record about the age of the girl it may be inferred that she must be a small child about 5 to 7 years. Due to knocking of the door by the small girl, P.W.1 Lalji began to abuse her in filthy language. Due to this, the accused, came out from his house and asked Lalji, as to why he was abusing. This resulted into exchange of hot words and further abuses. During that abrupt quarrel, in anger for which Lalji himself was responsible, the accused lifted a sickle and gave a blow causing injury referred above. From this, it is impossible to draw an inference that the intention of the accused was to cause death of Lalji Yadav. It is also difficult to draw inference that he had knowledge that by such a blow he would cause

his death.

9. Though injury was 2" long running from chest to abdomen and its depth was about 2", still it appears that it did not cause any grievous hurt. Though the Medical Officer described this injury as grievous hurt, it is difficult to accept his opinion Section 320 of Indian Penal Code defines grievous hurt as follows:-

> "The following kinds of hurt only are designated as "grievous":-
>
> First.- Emasculation.
>
> Secondly.- Permanent privation of the sight of either eye.
>
> Thirdly.- Permanent privation of the hearing of either ear,
>
> Fourthly._ Privation of any member or joint.
>
> Fifthly.- Destruction or permanent impairing of the powers of any member of joint.
>
> Sixthly._ Permanent disfiguration of the head or face.
>
> Seventhly._ Fracture or dislocation of a bone or tooth.
>
> Eighthly._ Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.

The injury suffered by Lalji Yadav certainly does not

fall in first 7 clauses. It appears that no vital organ of the body was injured, though the injury was about 2" deep. Therefore, it is difficult to say that due to the said injury life of Lalji Yadav was endangered. He was indoor patient only for a period of 8 days, according to his own admission. There is no evidence that during the space of 20 days he was in severe bodily pain or was unable to follow his ordinary pursuits. In view of this, even the injury does not fall in 8th clause of section 320 IPC. Hence, I find that it was not a grievous hurt but only "hurt" defined in Section 319 IPC. In view of the fact that the incident occurred abruptedly without premeditation or determination and without any previous dispute or quarrel, the accused may be held guilty of causing hurt with a sharp and cutting weapon and is liable to be convicted and sentenced for offence under section 324 of Indian Penal code.

10. The offence under Section 324 IPC is punishable with imprisonment which may extend to three years or with fine or with both. The accused appellant was in custody from 10/6/2004 to 7/7/2004 and then he was granted bail. Thus, as an under trial he was in jail for 28 days. After conviction by the trial Court, since

7/3/2006 he is continuously in jail. Thus he has been in jail for 1 year and 14 days from 17th March, 2006. As such he has undergone total imprisonment for 1 year and 42 days. The accused has also paid fine of Rs. 5000/- in the Sessions Court on 18/3/2006. In my opinion, taking into consideration the circumstances in which the offence was committed and the nature of the offence, sentence as already undergone is sufficient to meet the ends of justice.

11. Hence the order:-

(i) Appeal is partly allowed.

(ii) The conviction and sentence for the offence punishable under Section 307 of Indian Penal Code is hereby set aside. However, the accused is convicted for the offence punishable under Section 324 of IPC and is sentenced to Rigorous Imprisonment which he has already under gone from 10/6/2004 to 7/7/2004 and since 7/3/2006 till this date and fine of Rs. 5000/- which he has already paid.

(iii) He be set at liberty forthwith, if not required

in any other case.

**(J.H. BHATIA, J.)**